

REMARKS

At the time of the Office Action dated May 28, 2006, claims 2-16, 18-21, and 23 were pending and rejected in this application. Independent claims 2-3, 5, 18, and 20-21 have been amended to be address an informality. Specifically, these claims have each been amended to clarify the previous phrase of "quality or service" by replacing that phrase with "quality of service." Moreover, claims 18 and 20-21 have been amended to address an antecedent basis issue. Applicants submit that the present Amendment does not generate any new matter issue.

**CLAIMS 2-16, 18-21, AND 23 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING
ANTICIPATED BY OWENS ET AL., U.S. PATENT NO. 6,633,630 (HEREINAFTER OWENS)**

On pages 2-6 of the Office Action, the Examiner asserted that Owens discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

Independent claims 2-3, 5, 18, 20-21 and 23

The Examiner asserted that the claimed "message broker" is identically disclosed by feature 34 (i.e., a receiver 34; see column 7, lines 9-11). Applicants respectfully disagree. The message receiver 34 of Owens would not be considered comparable to the claimed message broker. Instead, the message receiver 34 of Owens would be more appropriately analogized to a subscriber.

The claims 2-3, 5, 18, 20-21 and 23 further recite:

responsive to receipt of a published message at a message broker, referring to characteristics of the received message and subscriber-specified quality of service requirements to determine an appropriate quality of service for onward transmission of the message.

To teach these limitations the Examiner cited column 10, lines 1-8; column 7, lines 4-5; and lines 10-18 of the Abstract of Owens. Applicants respectfully disagree that these cited passages teach the claimed limitations.

The teachings found in column 10, lines 1-8 are only directed to sender options and not subscriber-specified quality of service requirements. The teachings found in column 7, lines 4-5 only state that a user chooses a communication mode with which to establish a connection 22, 34 with a network. Again, these teachings are not directed to subscriber-specified quality of service requirements. Finally, the teachings found in lines 10-18 of the Abstract note that message senders and receivers may choose from a variety of filter and forward options, but there is no explicit disclosure within Owens with regard to subscriber-specified quality of service requirements. Moreover, these cited passages are silent as to a message broker referring both to (i) characteristics of the received message and (ii) subscriber-specified quality of service requirements to determine an appropriate quality of service for onward transmission of the message.

The claims 2-3, 5, 18, 20-21 and 23 additionally recite:

selecting a communication protocol in accordance with the determined quality of service.

To teach these limitations the Examiner cited column 9, line 61-column 10, line 1 and column 2, lines 24-27 of Owens. Applicants respectfully disagree that these cited passages teach the claimed limitations.

The teachings found in column 9, line 61-column 10, line 1 only teach that message senders and message receivers have a variety of message management options available to them. There is, however, no teaching with regard to a communication protocol being selected or that the communication protocol is selected in accordance to the determined quality of service. The Examiner's cited passage of column 2, lines 24-27 does not include teachings of Owens invention. Instead, this passage only discusses "the limitations in current communications technology."

The only relevant passage to the claimed limitations, which the Examiner has previously cited, is found in column 7, lines 4-5, which describes that the user choose a communication mode. This teaching, however, fails to state that the communication mode is selected based upon a determined quality of service, which is determined by referring to characteristics of the received message and subscriber-specified quality of service requirements, as recited in the claims. Instead, Owens appears to teach that the communications mode is chosen prior to the message even being sent. Thus, Owens cannot teach the communications mode is selected, in part, based upon characteristics of the received message.

The claims 2-2, 5, 18, 20-21 and 23 also recite:

transmitting the message using the selected communication protocol.

To teach these limitations the Examiner cited column 9, line 61-column 10, line 8 of Owens. Applicants respectfully disagree that these cited passages teach the claimed limitations. As already noted above, this passage does not teach a communication protocol being selected or that the communication protocol is selected in accordance to the determined quality of service. Thus, this passage cannot teach that the message is transmitted using the selected communication protocol.

The above argued differences between the invention defined in independent claims 2, 5, 18, 20-21 and 23 and the teachings of Owens undermine the factual determination that Owens identically describes the claimed invention within the meaning of 35 U.S.C. § 102. Applicants, therefore, respectfully submit that the imposed rejection of claims 2-16, 18-21, and 23 under 35 U.S.C. § 102 for anticipation based upon Owens is not factually viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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